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*Counsel for Non-Party Garnishee  
Redi Fresh Produce, Inc.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
NYKCool A.B.,

Plaintiff,

12 Civ. 5754 (LAK)

- against -

PACIFIC INTERNATIONAL SERVICES, INC.,  
PAN AMERICAN TRADING COMPANY, INC.,  
FRUIT IMPORTERS AMERICAS, INC.,  
PACIFIC GROUP HOLDING, INC.,  
ECUADORIAN LINE, INC., SOUTH PACIFIC  
SHIPPING CO. LTD., ALVARO FERNANDO  
NOBOA PONTON, CARLOS AGUIRRE, CARLOS  
AHLSTROM, EDWARD HICKEY, and ROBERT  
KISSINGER

Defendants,

-and -

PACIFIC FRUIT INC. and KELSO  
ENTERPRISES LTD.,

Defendants-in-Interest.

-----X  
**DECLARATION OF PETER MALO IN SUPPORT OF MOTION, PURSUANT TO CPLR  
6223, TO VACATE OR MODIFY THE ORDER FOR ISSUANCE OF ATTACHMENT  
AND GARNISHMENT**

1 I, Peter Malo, am Owner of Redi Fresh Produce, Inc. Redi Fresh was formed fifteen years ago and, over those past fifteen years has purchased, imported and sold fruit of various types to wholesalers all around the United States

2 Until June 2013, Redi Fresh never purchased or sold Bonita Bananas. Beginning on or about June, 2013, as is customary in the fruit business, Redi Fresh made a series of oral purchase orders for Bonita Bananas from a seller called Truisfruit. Exemplary copies of invoices from Truisfruit for the Bonita Banana Shipments are attached hereto as Exhibit 1 ("**Purchase Documents**")

3 Redi Fresh purchased the Bonita Bananas on an "FOB" free on board ("**FOB**") basis. This means that *both* risk and title with respect to the Bananas transferred to Redi Fresh when the bananas were loaded upon the vessel.

4 Once the Bonita Bananas were loaded on the vessel, Redi Fresh became their owner and became indebted to Truisfruit for the respective purchase price.

5 On August 16, 2013, Redi Fresh was served with the Attachment Order. The Attachment Order dated August 1, 2013 is attached hereto as Exhibit 2. Thereafter, counsel for Redi Fresh appeared at a status conference in this matter held before Judge Peck on August 21, 2013. Redi Fresh was instructed that it was free to make a motion to the Court if it felt aggrieved by the Attachment Order. (8/21/13 Tr. at 12:10-13.)

6 Redi Fresh received calls from its customers stating that they had received copies of the Attachment Order, and were otherwise contacted by lawyers acting for Plaintiff. Redi

Fresh served an answer of garnishee on August 30, 2013.

I declare that pursuant to 28 U.S.C. § 1746 and under penalty of perjury that the foregoing is true and correct.

Dated: \_\_\_\_\_  
September 3, 2013

By:   
PETER MALO

**Exhibit 1**

# TRUISFRUIT SA.

EL ORO 101 INTERSECCION VIVERO 5 DE JUNIO

RUC 0992601523001

Guayaquil - Ecuador

Contribuyente especial

Resolución No. NAC-PCTRSGE-1300163

de Abril 2/2013

Guayaquil, August 17th, 2013

INVOICE : 001-001-000011978

Messrs. REDI-FRESH PRODUCE INC.

48-02 5TH AVE. SUITE 404

ASTORIA, NY 11103

M/V BARRINGTON ISLAND 228/2013

August 17th, 2013

QUANTITY	DESCRIPTION		FOB	TOTAL DUE
4.800	BOXES 22XU BANANAS	GYE-PTM	8,53	40.944,00
4.800				\$40.944,00

## TOTALES

GROSSWEIGHT

NETWEIGHT

BANANAS 22XU

93.696,00

87.072,00

FORTY THOUSAND NINE HUNDRED FORTY FOUR AND  
AND 00/100 USCY DOLLARS)

AT 5 CONTAINERS OF 40'

TRUISFRUIT S.A.  
FIRMA AUTORIZADA

# TRUISFRUIT SA.

EL ORO 101 INTERSECCION VIVERO 5 DE JUNIO

RUC 0992601523001

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INVOICE : 001-001-000011978

Messrs. REDI-FRESH PRODUCE INC.

48-02 5TH AVE SUITE 404

ASTORIA, NY 11103

M/V BARRINGTON ISLAND 228/2013

August 17th, 2013

QUANTITY	DESCRIPTION		FOB	TOTAL DUE
15.120	BOXES 22XU BANANAS	GYE-PTM	8,53	128.973,60
15.120				\$128.973,60

## TOTALES

	GROSSWEIGHT	NETWEIGHT
BANANAS 22XU	295.142,40	274.276,80

(ONE HUNDRED TWENTY EIGHT THOUSAND NINE HUNDRED SEVENTY THREE  
AND 60/100 USCY DOLLARS)

AT 14 CONTAINERS OF 40'

"THE SOLID WOOD PACKING MATERIAL ARE TOTALLY FREE FROM  
BARK AND APPARENTLY FREE FROM LIVE PLANT PESTS"

TRUISFRUIT S.A.  
FIRMA AUTORIZADA

**TRUISFRUIT SA.**

EL ORO 101 INTERSECCION VIVERO 5 DE JUNIO

RUC 0992601523001

Guayaquil - Ecuador

Contribuyente especial

Resolución No. NAC-PCTRSGE-1300163

de Abril 2/2013

Guayaquil, August 17th,/2013

INVOICE : 001-001-000011978

Messrs. REDI-FRESH PRODUCE INC.

48-02 5TH AVE SUITE 404

ASTORIA, NY 11103

M/V BARRINGTON ISLAND 228/2013

August 17th, 2013

QUANTITY	DESCRIPTION		FOB	TOTAL DUE
6.480	BOXES 22XU BANANAS	GYE-PTM	8,53	55.274,40
6.480				\$55.274,40

**TOTALES**

	GROSSWEIGHT	NETWEIGHT
BANANAS 22XU	126.489,60	117.547,20

(FIFTY FIVE THOUSAND TWO HUNDRED SEVENTY FOUR  
AND 40/100 USCY DOLLARS)

AT 6 CONTAINERS OF 40'

"THE SOLID WOOD PACKING MATERIAL ARE TOTALLY FREE FROM  
BARK AND APPARENTLY FREE FROM LIVE PLANT PESTS"

TRUISFRUIT S.A.  
FIRMA AUTORIZADA

**Exhibit 2**



*KARAN J*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

AUG 01 2013

-----X  
NYKCool A.B.,

12 Civ. 5754 (LAK)

Plaintiff,

-against-

ORDER FOR ISSUANCE  
OF ATTACHMENT AND  
GARNISHMENT

PACIFIC INTERNATIONAL SERVICES,  
INC., PAN AMERICAN TRADING COMPANY,  
INC., FRUIT IMPORTERS AMERICAS,  
INC., PACIFIC GROUP HOLDING, INC.,  
ECUADORIAN LINE, INC., SOUTH PACIFIC  
SHIPPING CO. LTD., ALVARO FERNANDO  
NOBOA PONTON, CARLOS AGUIRRE, CARLOS  
AHLSTROM, EDWARD HICKEY, and ROBERT  
KISSINGER

Defendants.

-and-

PACIFIC FRUIT INC. and KELSO  
ENTERPRISES LTD.,

Defendants-in-Interest.

-----X

UPON the prior pleadings and proceedings in this action, and upon all the papers submitted in support of seeking an order of attachment, pursuant to Article 62 of New York's Civil Practice Law and Rules, in aid of satisfying the judgment in the amount of \$8,787,157, plus interest, sought thereon against defendants ALVARO FERNANDO NOBOA PONTON ("NOBOA"), CARLOS AGUIRRE ("AGUIRRE"), and EDWARD HICKEY ("HICKEY"), and the Court finding that the

conditions for issuance of an order of attachment without notice appear to exist;

IT IS HEREBY ORDERED that, pursuant to CPLR 6201(1) and CPLR 6211, all banana cargoes entering the Port of New York under the "Bonita" brand, as well as all goods, rights, services, obligations, trusts, rights to payment or profits, chattels, credits, letters of credit, bills of lading, debts, effects and monies, funds, accounts, freights, sub-freights, charter hire, sub-charter hire, or any other tangible or intangible property belonging to, claimed by, being held for or on behalf or otherwise for the benefit of NOBOA, AGUIRRE, HICKEY, and each of them, by any garnishee within this district upon whom this order of attachment is served up to the amount of \$8,187,157 shall be attached and seized; and it is further

ORDERED that pursuant to CPLR 6211(b), the United States Marshal or other designated process server shall refrain from taking any tangible or intangible property levied upon into custody, but rather the garnishee served shall hold such property until further order of the Court; and it is further

ORDERED that, pursuant to CPLR 6219, any garnishee served with this order of attachment shall, within five (5) days after service or within a shorter time as this Court may direct, serve upon petitioner, the United States Marshal and/or the designated process server, and Mahoney & Keane, LLP, 40 Worth Street, Tenth Floor, New York, New York 10013 (Fax: 212-385-1605 and E-Mail: ekeane@mahoneykeane.com), a statement specifying all debts of the garnishee to the defendant, when the debts are due, all property in the possession or custody of the garnishee in which the defendant has an interest, and the value of the debts and property specified, and it is further

ORDERED that, pursuant to CPLR 6211(b), plaintiff shall, within ten (10) days after levy of any property, apply for an order confirming this order of attachment; and it is further

ORDERED that, if plaintiff demonstrates that the garnishee statement required by this order and CPLR 6219 has not been served as set forth above, that the Court may grant one extension of time not to exceed ten (10) days for petitioner to move for confirmation, during which time petitioner may seek an order from this Court compelling any garnishee to serve said statement, and it is further

ORDERED that, solely for the purposes of notifying defendants of plaintiff's motion for confirmation of this order of attachment, service via registered mail or Federal Express overnight service upon Hill Rivkins LLP, 45 Broadway, Suite 1500, New York, NY 10006 shall be deemed good and sufficient; and it is further

ORDERED that any person claiming an interest in the property attached or garnished pursuant to this order shall, upon application to the Court, be entitled to a prompt hearing at which plaintiff shall be required to show why the attachment and garnishment should not be vacated or other relief granted, and it is further

ORDERED that supplemental process entering this Court's order may be issued by the clerk upon application without further Order of the Court, and it is further

ORDERED that following initial service upon any garnishee by the United States Marshal or any other person designated or authorized by this Order to make service in this action, subsequent or supplemental service of this Order may thereafter be made by way of facsimile transmission or other verifiable electronic means, including e-mail, to each garnishee so personally served, and it is further

ORDERED that, pursuant to Rule 4(c)(1) of the Federal Rules of Civil Procedure, attachment documents may be served by any person, who is not less than 18 years old, and who is not a party to this action

↙ Dated: New York, New York  
August 7, 2013

SO ORDERED

  
\_\_\_\_\_  
U.S.D.J.

Part I

